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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,688	03/09/2004	Norris E. Warner	P-124923.1	2637

7590 10/19/2004

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,688

Applicant(s)

WARNER ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "22" has been used to designate both aerosol spray can and trigger lever (see Figure 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 1 is objected to because of the following informalities: in claim 1, line 7, it appears that the claimed limitation "said hammer" lacks proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3754

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Smrt 3,485,206.

Smrt discloses an apparatus for mounting an aerosol spray can (11) having a push-button (14) as seen in Figure 1, which comprises a handle (15) having a first coupling end (16,17), a second body end (37), a can base support (18) attached to the handle, a body member (23) attached to the second end of the handle, a trigger lever (22) pivotably attached to the body member, the lever having first (26) and second arms (25), a trigger yoke (29) for pivotably supporting a trigger hammer (31), the hammer aligned with the push-button when the aerosol can is supported in the can base support, an actuator member (33) attached to the first arm of the lever whereby movement of the actuator pivots the lever engaging the hammer, the hammer depressing the push button as seen in Figure 1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2,4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smrt 3,485,206 in view of Hickson 3,856,209.

Smrt has taught all the features of the claimed invention except that an extension pole connectable to a coupling end of the handle. Hickson teaches the use of a handle

(11) having a coupling end (15), where an extension pole (14) is connected to the coupling end of the handle (col. 2, ll. 24-28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Smrt's first coupling end handle with Hickson's coupling end as taught by Hickson in (col. 2, ll. 24-28), in order to provide a relatively long handle which is in two sections and removably held together by a ferrule.

With respect to claim 4, the claimed limitation "said first and second arm are disposed at an angle in the range of 91°.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first and second arm to be disposed at an angle in the range of 91°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smrt 3,485,206.

Smrt has taught all the features of the claimed invention except that said first and second arm are disposed at an angle in the range of 91°-101°.


It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first and second arm to be disposed at an angle in the range of 91°-101°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Drew 6,789,705, Orozco 6,390,336, Smrt 4,099,482, Yoshitomi 4,886,191, Lee 4,089,440, Meuwly 3,039,657, Bishop 3,017,056, Bedore et al. 5,307,959, Wentzell 3,861,566 and Silva 3,716,195 disclose other types of apparatus for mounting an aerosol spray can.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
October 18, 2004

 10/18/04
Frederick C. Nicolas
Patent Examiner
Art Unit 3754